



## CITY OF LODI

## COUNCIL COMMUNICATION

**AGENDA TITLE:** Review and Consider Approval of Agreement between City of Lodi and Lodi Unified School District for Lifeguard Services

**MEETING DATE:** August 7, 2002

**PREPARED BY:** Parks and Recreation Director

**RECOMMENDED ACTION:** That the City Council provide policy direction regarding LUSD request for assistance and review and consider approval of an Agreement between the City of Lodi and Lodi Unified School District to provide lifeguard services at Lodi and Tokay High School.

**BACKGROUND INFORMATION:** The City of Lodi has been approached by Lodi Unified School District (LUSD) with a request that the City consider providing lifeguard services at Lodi High School and Tokay High School swimming pools.

Historically, the City of Lodi and LUSD have had a good working relationship. LUSD has expressed a strong interest in working with the City in some manner to provide lifeguard staff rather than hiring lifeguards themselves. As you may recall, the City currently has a Joint Use Agreement with LUSD for utilization of various LUSD and City of Lodi facilities. Any Agreement for lifeguard services would be a separate agreement with LUSD.

LUSD has requested that the City respond to their request to provide lifeguard services and, if possible, provide a proposal. Responses to consider may include:

- Declining to formally provide the lifeguard staff but continue to provide training and assistance to LUSD as requested.
- Enter into a formal Agreement to provide lifeguards provided that the City interests are protected as well as possible.

For purposes of consideration, a draft Agreement for the City to provide lifeguards is under preparation and review which will be forwarded to Council upon completion. This issue will also be presented at the Parks and Recreation Commission meeting on August 6, 2002.

**APPROVED:** \_\_\_\_\_  
H. Dixon Flynn -- City Manager

08/01/02



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Any Agreement is anticipated to include language which will attempt to limit liability to the City. In addition, the Agreement will state that LUSD is responsible for all costs associated with provision of lifeguard staff at Lodi High School and Tokay High School swimming pools. An administrative fee payment to the City is also anticipated.

Staff anticipates that the most challenging issues associated with this matter will be attempting to protect the City from any liability and insuring that enough certified lifeguards are available for scheduling at the LUSD facilities. LUSD has indicated a desire to have lifeguards at instructional uses of the pool. This includes physical education and summer school classes which may amount to roughly 2,000 hours or more annually.

Should LUSD desire additional hours of lifeguard services beyond instructional needs and also include athletic and recreational uses of their pools we would anticipate a need to add additional City supervisory staff.

Should Council approve of providing lifeguard services, our seasonal recruitment and supervision of aquatics staff would need to be expanded. Recruitment of lifeguards will need to begin immediately. Our current staff of 30 to 40 temporary lifeguards is largely comprised of students who return to school in August and September.

At the time I am preparing this communication a survey of our staff indicates only one or two who may be interested in lifeguarding for the High Schools. Also, the response to our preliminary efforts to encourage LUSD staff recruitment as lifeguards has not been encouraging. This lack of interest is a concern and is an indication of the challenge we anticipate.

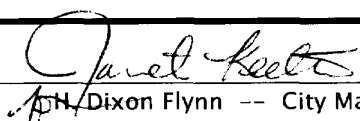
Regardless of the outcome of this issue, our staff fully intends to continue to work with LUSD to provide training assistance if requested as we have in the past.

  
Roger Baltz  
Parks and Recreation Director

RB/tl

cc: City Attorney

APPROVED: \_\_\_\_\_

  
Janel Keeton  
City Manager

08/01/02

DRAFT  
EXHIBIT A

AGREEMENT  
TO  
PROVIDE LIFEGUARD STAFF TO LODI HIGH SCHOOL AND  
TOKAY HIGH SCHOOL

**THIS AGREEMENT** is made and entered into, by and between the CITY OF LODI, a municipal corporation organized and existing under the Constitution and Laws of the State of California, hereinafter referred to as the "City" and Lodi Unified School District, hereinafter referred to as "LUSD" and pursuant to the authority granted by Resolution No. \_\_\_\_\_, adopted by the Lodi City Council on the \_\_\_\_ day of \_\_\_\_\_, 2002.

**WITNESSETH:**

WHEREAS, LUSD desires to provide lifeguard staff for certain activities occurring in Lodi High School and Tokay High School swimming; and

WHEREAS, LUSD wishes to enter into an agreement providing for lifeguard staffing to be provided through the City:

NOW, THEREFORE, for and in consideration of mutual benefits flowing to the parties herein, the parties hereto agree as follows:

1. **TERM**—The term of this Agreement shall be for a one (1) year period beginning with the date upon which this instrument is executed.

This Agreement term may be extended on a year to year basis with mutual consent of the parties.

2. **SERVICES**—City hereby agrees to provide to LUSD lifeguard staff for instructional activities at Lodi High School and Tokay High School swimming pools. Two (2) lifeguards will be present for each Physical Education class.

City agrees that LUSD administrators will be consulted on lifeguard staff hiring decisions.

City agrees that all lifeguards will undergo fingerprinting background check.

City agrees that all lifeguards will hold American Red Cross designation as "Certified Lifeguard".

LUSD agrees to provide an estimate of total hours for which lifeguards are needed annually. The estimate will be provided to City no later than August 1 of each year. The estimate will contain at least monthly breakdown of hours by pool location. LUSD will specify dates and hours of lifeguard service requested upon request of the City.

LUSD acknowledges that establishing and maintaining a pool of qualified lifeguards is imperative and will assist in recruitment of LUSD staff and students to become certified to the extent allowed.

LUSD will provide all maintenance, equipment, uniforms, cost of training, electronic, or telecommunications devices needed by lifeguards to perform their duties.

3. **COMPENSATION**—Both parties agree that payment for services provided by City are limited to staff salaries and City administrative fees only. All other expenses associated with operations of Lodi High School or Tokay High School swimming pools are the responsibility of LUSD.

Rates for staff provided by City are:

Head Lifeguard	\$14.00 per hour
Lifeguard	\$10.00 per hour

LUSD agrees to pay City a 10% administrative fee for services rendered. The 10% fees will be based upon the salary of the Recreation Supervisor assigned by the Parks and Recreation Department to oversee the lifeguard staff.

No later than August 30 of each year LUSD shall pay, in advance, a lump sum amount to City based upon estimates of hours, salary rates, and administrative fee. The lump sum shall be placed in a fund exclusively for deducting payments due the City. LUSD shall be provided a quarterly billing statement from City itemizing charges made against the fund. No later than September 30 of each year any amount left in the fund shall be returned to LUSD while any additional amounts owed City will be paid by LUSD to City.

LUSD shall be billed directly by City for all costs associated with recruitment of lifeguards or other miscellaneous costs incurred by City in providing lifeguard staff.

4. **TERMINATION**—Either party shall have the right to terminate this Agreement by giving the other party seven (7) days written notice of its intention to do so.

5. **INDEMNITY AND INSURANCE**—

a. Disclaimer of Liability: City shall not at any time be liable for injury or damage occurring to any person or property from any cause whatsoever arising out of City services provided under the terms of this contract.

b. Indemnification of City: LUSD shall, at its sole cost and expense, indemnify and hold harmless City and all associated, affiliated, allied and subsidiary entities of City, now existing or hereinafter created, and their respective officers, boards, commissions, employees, agents, attorneys, and contractors all collectively (hereinafter referred to as "Indemnitees"), from and against:

Any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or be asserted against the Indemnities by reason of any actual or alleged act or omission of Indemnitees resulting in personal injury, bodily injury, sickness, disease or death to any person, or damage to, loss of, or destruction of tangible property, or any other right

of any person, firm or corporation, to the extent arising out of or resulting from the provision of services under the terms of this contract or Indemnitees failure to comply with any applicable federal, state or local statute, ordinance or regulation governing use of the premises.

c. Defense of Indemnities: In the event any action or proceeding shall be brought against the Indemnitees by reason of any matter for which the Indemnitees are indemnified hereunder, LUSD, as the case may be, shall, upon reasonable prior written notice, at LUSD's sole cost and expense, resist and defend the same with legal counsel selected by City; provided however, that neither LUSD nor City shall not admit liability in any such matter or behalf of the other without express written consent, which consent shall not be unreasonably withheld or delayed, nor enter into any compromise or settlement of, any claim for which they are indemnified hereunder, without prior express written consent. The indemnifying party's duty to defend shall begin upon receipt of a written notice identifying with specificity the allegations that give rise to this duty to defend and shall be co-extensive with the indemnifying party's indemnification obligations under the provisions of this Agreement.

d. Notice: The parties shall give each other prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this paragraph.

e. Insurance: During the term of the Agreement, LUSD shall maintain, or cause to be maintained, in full force and effect and at its sole cost and expense, comprehensive commercial general liability insurance with limits in the full amounts available through Genesis Insurance Company and the Schools Excess Liability Fund for each occurrence of bodily injury, personal injury and property damage.

f. Named Insured: All policies, except for worker's compensation policies, shall name City and all associated, affiliated, allied and subsidiary entities of City, now existing or hereafter created, and their respective officers, boards, commissions, employees, agents and contractors, as their respective interests may appear as additional insureds (herein referred to as the "Additional Insureds").

g. Primary Insurance: In addition to the "Additional Insured" as stated above, said insurance policies shall be endorsed to include the following language: "Such insurance as is afforded by the endorsement for the Additional Insured's shall apply as primary insurance. Any other insurance maintained by the City of Lodi or its officers and employees shall be excess only and not contributing with the coinsurance afforded by this endorsement".

6. **FORCE MAJEURE**—City shall not be deemed to be in breach of this Agreement by reason of failure to perform any of its obligation under this Agreement if, and to the extent that such failure is due to embargoes, shortages of materials or certified personnel, acts of God, acts of the public enemy, acts of superior governmental authority, sabotage, strikes, boycotts, labor disputes, weather conditions, riots, rebellion, and any circumstances for which it is not responsible and which are not within its reasonable control.

7. **NOTICE**—All notices and payments of funds required to be given hereunder by either party shall be deemed to have been sufficiently given by depositing the same in the United States Mail, certified, return receipt requested, with proper postage affixed thereto, and addressed as follows:

**To LUSD:**

Superintendent  
Lodi Unified School District  
1305 E. Vine Street  
Lodi CA 95240

**To City:**

Parks and Recreation Director  
City of Lodi  
125 N. Stockton Street  
Lodi CA 95240

It is further understood and agreed that as an alternate method of compliance with the provisions herein of giving notice and payments of funds that the same may be hand delivered to the above-designated individuals, and the receiving party shall be required to execute an acknowledgement of receipt for said notice or payments of funds. It is agreed that this alternate method of compliance shall be as good and sufficient as if the same had been mailed to the respective party as required above.

8. **DRUG-FREE POLICY**—City and LUSD agree to maintain a drug-free swimming pool, including employees, patrons, and students. The unlawful manufacture, distribution, dispensing, possession, use or being under the influence of controlled substances (drugs) and/or alcohol is prohibited.

9. **COMPLIANCE WITH LAWS**—Uses of the premises shall comply with all present and future laws, ordinances, codes, and regulations of federal, state, and local government.

10. **RIGHTS CUMULATIVE**—All rights, powers and privileges conferred hereunder upon parties hereto shall be cumulative and not restrictive of those given by law. Nothing contained herein shall impair the right of City to exercise its governmental and legislative functions.

11. **ENFORCEABILITY OF PROVISIONS**—If any provision of this Agreement or the application thereof to any party or circumstances should be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to any other party or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

12. **WAIVER OF COMPLIANCE**—No failure of City to exercise any power given City hereunder, or to insist upon strict compliance by LUSD of any obligations hereunder, and no custom or practice of the parties at variance with the terms hereof, shall constitute a waiver of City's right to demand exact compliance with the terms hereof.

13. **GOVERNING LAW**—This Agreement has been made under and shall be construed in accordance with the laws of the State of California.

14. **DESCRIPTIVE READINGS**—Descriptive headings appearing upon this lease are for convenience only and are not to be construed either as a part of the terms and conditions or as any interpretation of the parties.

15. **ENTIRE AGREEMENT**—It is understood and agreed that the foregoing provisions constitute the entire agreement between the parties hereto. Any amendment or changes to the terms hereof must be in writing and properly executed and attested to by both parties in order to be binding.

This Agreement shall not become effective and enforceable until executed by both parties in writing.

**IN WITNESS WHEREOF**, City and Concessionaire have caused their proper officers to hereunto set their hands and affix their seals the day and year first above written.

CITY OF LODI, a municipal corporation

LODI UNIFIED SCHOOL DISTRICT

\_\_\_\_\_  
H. DIXON FLYNN  
City Manager

\_\_\_\_\_  
BILL HUYETT  
Superintendent

APPROVE AS TO FORM:

\_\_\_\_\_  
RANDALL A. HAYS  
City Attorney

ATTEST:

\_\_\_\_\_  
SUSAN J. BLACKSTON  
City Clerk

**Lodi***Unified School District***EXHIBIT B****AQUATICS SAFETY PROGRAM**

August 6, 2002

**PURPOSE OF THE PROGRAM**

The purpose of this program is to ensure that all District pools are free of safety hazards/risk of communicable diseases and provide a safe swimming environment.

**OPERATIONAL PROCEDURES FOR ALL LODI UNIFIED SCHOOL DISTRICT AQUATIC ACTIVITIES**

The following 10 paragraphs are operational requirements for all users of Lodi Unified School District pools. These requirements include staff certifications, training, and inspection of equipment and assessment of student swimming ability.

1. All teachers and coaches involved in any pool supervision/instruction shall possess an American Red Cross Emergency Water Safety Course certificate, or have equivalent qualifications (*such as The City of Lodi's Community Water Safety Class*), as determined by the state department (California Codes, Health and Safety Code Section 116033). In addition, these persons shall be certified in standard first aid and cardiopulmonary resuscitation (CPR). All records of completion shall be kept on file at the site and with Personnel and Risk Management at the ESC.
2. All teachers and coaches involved in any pool supervision/instruction shall receive documented annual in-service training reviewing the American Red Cross Emergency Water Safety Course certificate or equivalent. In addition, at the beginning of the year, all teachers and coaches shall receive in-service training reviewing the district Aquatic Safety Program including these procedures.
3. Lifeguards possessing an American Red Cross Lifeguard Certification, or have equivalent qualifications, as determined by the state department and certified in standard first aid and cardiopulmonary resuscitation (CPR) must be present during all pool usages, except for usage related to team sports. All life guard certificates must be kept on file.
4. No person shall be allowed to enter the pools until instructed by the pool lifeguards after they are in proper position to oversee all pool activities.
5. A periodic documented inspection of the pool's safety equipment (i.e. first aid kit, emergency phone, body hook, life ring, diagrammatic illustrations of artificial respiration procedures, automated external defibrillator (AED) and emergency telephone numbers) shall be conducted. Documented training on all pool safety equipment including location and usage shall be provided to all teachers and coaches involved in any pool supervision/instruction.
6. Each pool shall have written emergency contact procedures. Documented training on the written emergency contact procedures shall be provided to all teachers and coaches involved in any pool supervision/instruction.



7. No substitute teachers shall be allowed to provide any pool supervision/instruction.
8. A documented initial student swimming assessment shall be conducted for all students. The initial assessment shall be conducted by the teacher on a 1-1 basis in the shallow end of the pool. A common grading scale such as + = *strong swimming abilities*, √ = *intermediate swimming abilities*, - = *weak swimming abilities* and 0 = *non-swimmer* shall be used.

The assessment shall include at a minimum an evaluation of a student's ability to swim 50 yards and ability to tread water for a minimum of 60 seconds. The student will be restricted to an appropriate depth of the pool based on their assessed ability to swim.

All records of student assessments shall be kept in the teacher's grade book.

9. Documented Hazardous Materials Communication training shall be provided to all teachers and coaches involved in any pool supervision/instruction. At a minimum, the Hazardous Communication training shall include the following:
  - How the hazard communication program is implemented, how to read and interpret information on labels and Material Data Safety Sheets (MSDS), and how employees can obtain and use the available hazard information.
  - The hazards of the chemicals in the work area.
  - Measures employees can take to protect themselves from the hazards. Specific procedures put into effect by the organization to provide protection, such as personal protective equipment.
10. The district shall limit the key access to all pool facilities to only authorized employees and or personnel.

## STATE REQUIREMENTS FOR POOL SAFETY

This program focuses on the inspection of swimming pools used by Lodi Unified students, staff and authorized parties. The local health department will conduct unannounced routine inspections of pools throughout the year.

If any questions arise or further information is needed about these requirements, please call the Environmental Health Division at (209) 468-3420.

Some potentially hazardous conditions could lead the Environmental Health Division to order a public swimming, spa, or wade pool closed. These include:

- **Loose, damaged or missing main drain covers.** Drowning and injuries have occurred when users became entrapped by the suction produced from the drain in the bottom of spas, wade pools and swimming pools.

- **Pool water which is so cloudy that the main drain at the bottom of the pool is not visible.** Drownings and near drownings have occurred when children have fallen into a dirty, cloudy pool and the child could not be located in time to effect a rescue.
- **Missing or inaccurate water depth markers.** Serious injuries can occur when bathers dive into a pool which is inaccurately marked.
- **Nonfunctional recirculation system.** If the recirculation system is broken and/or under repair, it is not possible to maintain the pool water in a clear, disinfected, and bacteriologically safe condition for any length of time. It is vital that pool water be maintained clear and disinfected.
- **The pool fencing/enclosure is in disrepair.** A pool which is not adequately fenced may be easily accessible to small children. Proper fencing is the primary means to prevent drowning by hindering access to the pool by small children. Changes to existing fencing or the installation of a new enclosure must receive approval from the Environmental Health Division prior to the start of construction.
- **Human fecal contamination in the pool.** Outbreaks of disease have been associated with pool water contaminated with feces. When fecal matter is observed, the pool shall be immediately closed and the fecal matter removed. The pool shall be super-chlorinated, the water filtered for at least 24 hours and the filters backwashed prior to reopening the pool. This same procedure should be employed if a dead animal is found in the pool.

Should any of these situations occur at your pool, take immediate action to correct the problem in order to ensure a safe environment for pool users.

The circumstances and authority for pool closure can be found in Section 65545 of Title 22 of the California Code of Regulations. Should conditions require that the pool be officially closed for use by the Environmental Health Division, the pool owner/operator will be notified, in writing, on an Official Pool Inspection Report. The pool site may be posted with one or more pool closure signs.

It is the responsibility of any pool owner or operator to ensure that a pool that has been closed by the Environmental Health Divisions not used and to immediately correct the hazard. A closed pool shall not be reopened for use until the violations have been corrected and upon specific written approval from the Environmental Health Division.

Should any questions arise or further information is needed with regards to these requirements, please call the Environmental Health Division at (209)468-3420.

## **POOL OPERATION REQUIREMENTS**

The following is a summary of some of the important regulations enforced by this Division. If you have any further questions, please contact the Division of Environmental Health at (209) 468-3240.

1. **Free chlorine residual:** Maintain at least 1.0 ppm, 1.5 parts per million (ppm), if cyanuric acid is used as a stabilizer. Cyanuric acid readings shall not exceed 100 ppm and shall be tested for by the operator at least once per month.

2. There shall be an approved disinfectant device (automatic chlorinator) which continuously maintains the above required free chlorine residuals. Continuous feeding of disinfectant and pool filtration are required during the hours the pool is available for use.
3. pH is to be maintained between 7.2 and 8.0.
4. Pool shall not be used if water is not clean and clear.
5. Safety and rescue equipment (to be maintained readily accessible at every swimming pool).
  - a. Body hook attached to a light, strong pole at least 12 feet in length.
  - b. Life ring attached to a 3/16-inch line long enough to span the maximum width of the pool. (Minimum exterior diameter of ring to be 17 inches)
6. Safety signs (posted in plain view from the nearby deck).
  - a. Diagrammatic illustrations of artificial respiration procedures.
  - b. Emergency phone number of the nearest emergency rescue service. The "911" emergency number, which is in effect for police, sheriff, fire and paramedic response, is recommended. The operator shall maintain periodic operating records.
7. Drain covers shall be secured and removable only with tools and shall be designed to prevent physical entrapment or a suction hazard.
8. Safety rope and buoys shall be maintained in the pool area if the pool is equipped for fastening such equipment.